

## **REMARKS**

Claims 1, 10, 13, 29, and 36-46 are pending in the case, claims 2-9, 11-12, 14-28, and 30-35 having previously been canceled and claims 36-46 having previously been added. The Office Action rejected the claims as follows:

- claims 1, 13, 29, 30, 38 and 39 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 6,944,474 (“Rader, *et al.*”);
- claims 29, 30, 38, 39 and 42-45 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 7,110,951 (“Lemelson, *et al.*”);
- claims 1, 10, 13, 36 and 37 as obvious under 35 U.S.C. §103(a) over Lemelson *et al.*;
- claims 30 and 41 as obvious under 35 U.S.C. §103(a) over Lemelson *et al.* in view of U.S. Letters Patent 3,808,354 (“Feezor”);
- claim 41 as obvious under 35 U.S.C. §103(a) over Lemelson *et al.* in view of Feezor and in further view of U.S. Patent 5,550,923 (“Horvet”); and
- claim 46 as obvious under 35 U.S.C. §103(a) over Lemelson *et al.* in view of Rader.

Applicants continue to traverse each of the rejections in this case.

### **I. INFORMALITIES**

Applicants note that claims 29-35 were rejected in the previous Office Action under 35 U.S.C. §112, ¶2 for lack of antecedent basis as to two limitations. This rejection was not addressed in any way in this Office Action—whether by withdrawing it, in response to Applicants’ arguments, or by reassertion. Applicants’ believe the rejections were overcome in the response to that Office Action. Accordingly, Applicants presume that this rejection has been withdrawn since it was not reasserted. Applicants request notification if they are mistaken.

The amendment to claim 38 is not made for purposes of patentability, but rather to eliminate a double inclusion, which is a matter of form. Furthermore, the amendment does not narrow the scope of the invention. The amendment actually broadens the scope of the claim.

## II. RESPONSE TO SUBSTANTIVE MATTERS

### A. CLAIMS 1, 13, 29 AND 36-46 ARE NOVEL OVER RADER, *ET AL.*

The Office Action rejected claims 1, 3-6, 11-13, 15-20, 24-26 and 28-32 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 6,944,474 (“Rader, *et al.*”). Each of the independent claims was amended to recite a limitation not taught or suggested by Rader *et al.*, *i.e.*:

- claims 1, 13, and 29 recite some variation of the authentication of a user identification;
- claim 38 recites “receiving data indicative of a detected acoustic test signal”; and
- claim 42 recites “receiving data associated with... a device profile”.

Each of the dependent claims incorporates one or more of these limitations from the independent claims from which they depend. 35 U.S.C. §112, ¶4.

The Office disagreed as follows:

Applicant argued that Rader fails to disclose the step of authentication of a user identification. This is not persuasive. The term “PIN” is well known to general public, has a meaning of providing restricted and protected access to an account. For example, a user needs a PIN in order to access his/her account using ATM. Thus, Rader discloses the claimed limitation.

(Detailed Action, p. 6) The Office has erred by layering the actual disclosure of Rader *et al.* with a gloss not justified by its disclosure.

Rader *et al.* does disclose a “PIN”, but the disclosed PIN is used for identification, not authentication. A “PIN” is a “personal identification number”. The PIN can be used for many purposes. PINs are frequently used for identification. For example, soldiers in the military are given a serial number which is a numeric, or alpha-numeric, identifier—that is a “personal identification number”. Inmates in correctional facilities also are given a numeric or alpha-numeric identifiers, which is also a “personal identification number.” On the other hand, a PIN can be used for authentication. A PIN can be used in many ways, identification and authentication being but two of those ways.

Thus, in the present context, the disclosure of a “PIN” is not determinative. What is determinative is how it is used. And Rader *et al.* uses the PIN as an identification, not an authentication. Rader *et al.* only discloses the use of a PIN in two paragraphs reproduced below:

The processing system 4 shown in FIG. 3 may be computation resources that are not on board the mobile phone, but may be in close proximity. Examples could be a base station for a handset mounted in an automobile, a telematics system that communicates to the handheld unit, or a mobile computer (or PDA) with processing resources independent of the systems of the mobile phone. The processing system of 4 could have the hearing profile of the listener pre-loaded or transmitted to it by a data source 5. Once the profile is transferred to the processing system 4, *the hearing profile could be transferred to the mobile phone via a wireless local transfer 7, presentation of a PIN (personal identification number) to a user to type in or transfer of a PIN 8 into the mobile phone 1*, or through a direct (such as via a wire) connection 9. Independently of a processing system 4, a hearing profile could be transferred to the mobile phone 1 by a memory storage medium 6, or through the transmission system incorporating the remote system 3, the transceiver system 2, and wireless transmission to the resources of the mobile phone 1 for incorporation of the profile into the memory or audio processor of the mobile phone 1. Protocols such as the Wireless Short Message Service SMS which is in common use with mobile phones, can be used for downloading programs and data to support the loading of a hearing profile on a phone or other personal communication device.

The processing system 4 could also be the source of profile algorithm control, acoustic stimuli generation, user feedback collection and computation of the hearing profile. *The resources of 4 could be used to provide the user or the mobile phone with a PIN code, or directly transfer a profile to the mobile phone through wireless means 7 or direct connection 9.* The processing resources of the mobile phone 1 and the processing system 4 could be used in multiple combinations to separate functions such as test protocol control, acoustic stimuli generation, user feedback collection, and profile calculation on either subsystem in any combination. The instructions for such functions can be provided with the phone, downloaded to the phone for execution, or stored and executed in a server which communicates with the phone during the processing, or a provided using a combination of these architectures.

(col. 7, line 32 – col. 8, line 6, emphasis added) It is clear that the purpose of the PIN is to identify the user so that the correct profile can be transferred to the mobile phone. There is no

indication that the PIN is used for authentication. The Office's construction, from wherever it may be derived, is not supported by the disclosure.

This is reinforced by the language of the claims, which requires *both* identification *and* authentication in separate steps. This is inherent in the language "authenticating a user identification". If the PIN is construed to be an authentication in Rader *et al.*, then there is no identification. Rader *et al.* therefore would still not disclose all the limitations of the claims.

An anticipating reference, by definition, must disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claim. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). Rader *et al.* fails to meet this standard with respect to the original claims as amended and the new claims. Rader *et al.* fails to disclose "authenticating a user identification". If the disclosure of a "PIN" is construed as an authentication, then there is no identification and Rader *et al.* still fails to anticipate any claim. Applicants therefore request that the rejection be withdrawn.

**B. CLAIMS 29, 30, 38, 39 AND 42-45  
ARE NOVEL OVER LEMELSON, *ET AL.***

The Office Action rejected claims 29, 30, 38, 39 and 42-45 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 7,110,951 ("Lemelson, *et al.*"). As with Rader *et al.*, each of the independent claims recites a limitation not taught or suggested by Lemelson *et al.* More particularly:

- claims 29 and 38 recites "receiving data indicative of a detected acoustic test signal"; and
- claim 42 recites "receiving data associated with... a device profile".

Each of the dependent claims incorporates one or more of these limitations from the independent claims from which they depend. 35 U.S.C. §112, ¶4. These limitations were argued in the previous Office Action.

With respect to claims 29 and 38, the Office contends that Lemelson *et al.* does, in fact, teach "receiving data indicative of a detected acoustic test signal" as follows:

Applicant argued that Lemelson fails to show the step of receiving data indicative of a detected acoustic test signal. This is not true. The system in Lemelson receives the response from the user indicative of the detected acoustic test signal.

(Detailed Action, p. 6) Thus, the Office has now subtly shifted its construction of Lemelson *et al.* from the hearing test to the “user’s response” to that test signal. (*see also* Detailed Action, p. 3)

Applicants respectfully submit that a user does not “detect” the test signal, but rather “hears” the test signal. To equate “hearing” and “detecting” in this context is technically and technologically wrong. Furthermore, the “user’s response” is not indicative of the detected acoustic test signal”. It is instead indicative of the fact that the user heard the test signal—it provides no information regarding the test signal itself.

With respect to claim 42, the Office alleges that Lemelson *et al.* teaches recites “receiving data associated with... a device profile” as follows:

Regarding claims 42, 44 and 45, Lemelson further shows the step of receiving data (by 14) associated with at least one audio profile (from 26) and a device profile (from 28, 30 or 32).

(Detailed Action, p. 4) While these modules 28, 30, and 32 might be part of a device profile, they do not themselves provide data regarding a device profile. They instead provide data that can be displayed to a hearing impaired user (col. 11, lines 26-36) and to correct errors produced by the speech recognition and lip reading modules (col. 11, lines 37-51), respectively.

Accordingly, Lemelson *et al.* fails to disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claims. Lemelson *et al.* therefore does not anticipate any of claims 1, 10, 13, 29, and 36-46. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). Wherefore, Applicants respectfully request that the rejections be withdrawn.

### **C. CLAIMS 1, 10, AND 13 ARE UNOBVIOUS OVER LEMELSON *ET AL.***

The Office rejected claims 1, 10, and 13 as obvious under 35 U.S.C. §103(a) over U.S. Letters Patent 7,110,951 (“Lemelson, *et al.*”). As is established above, Lemelson *et al.* fails to teach or suggest “receiving data associated with... a device profile”. Claims 1 and 13 have been amended to recite this limitation. Claim 10 incorporates this limitation from its dependence from claim 1. 35 U.S.C. §112, ¶4.

Accordingly, the art of record fails to teach or suggest these limitations. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must

teach or suggest all the claim limitations. M.P.E.P. § 706.02(j); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). The art of record therefore fails to render obvious any of claims 30, 36-37, 41, and 46. Wherefore, Applicants request that the rejections be withdrawn.

**D. CLAIMS 30, 36-37, 41, AND 46 ARE UNOBVIOUS OVER THE CITED ART**

The Office rejected claims 30, 36-37, 41, and 46 as obvious under 35 U.S.C. §103(a) over U.S. Letters Patent 7,110,951 (“Lemelson, *et al.*”) in varying combinations with U.S. Letters Patent 3,808,354 (“Feezor”); U.S. Patent 5,550,923 (“Horvet”); and U.S. Letters Patent 6,944,474 (“Rader, *et al.*”). As is established above:

- claims 29 and 38 recites “receiving data indicative of a detected acoustic test signal”; and
- claim 42 recites “receiving data associated with... a device profile”.

Each of the dependent claims incorporates one or more of these limitations from the independent claims from which they depend. 35 U.S.C. §112, ¶4.

The Office does not allege that any of Feezor, Horvet, and Rader, *et al.* teach or suggest these limitations. Applicants’ review of these references have not produced any.

Accordingly, the art of record fails to teach or suggest these limitations. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 706.02(j); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). The art of record therefore fails to render obvious any of claims 30, 36-37, 41, and 46. Wherefore, Applicants request that the rejections be withdrawn.

**III. CONCLUDING REMARKS**

Applicants therefore respectfully submit that the claims are in condition for allowance, and requests that the rejections be withdrawn and the claims be allowed to issue. The Examiner is invited to contact the undersigned attorney at (713) 934-4053 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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